

REMARKS

In the Office Action dated September 23, 2008, the Patent Office issued election/restriction requirements. Applicant provisionally elects Group I (Claims 1-15 and 35), with traverse.

Group I (Claims 1-15 and 35) and Group II (Claims 16-30) should be examined in the same application. The Patent Office pointed out that Group I is directed to a “kit”, and Group II is directed to a “case”. This is true. It should be noted, however, that the preamble of independent claim 16 (Group II) is similar to the first element of independent claim 1 (Group I). It should also be noted that the first and second elements of independent claim 16 (Group II) are similar to the second and third elements of independent claim 1 (Group I). Thus, a search for the elements of Group I would also be directly relevant to the elements of Group II. In addition, as shown above, there are at least two common “special technical features” linking these two groups. Applicant respectfully suggests and requests that the claims of Group II should be examined with the claims of Group I as the claims are similar and would not require any different searches. (Also see MPEP 803 regarding restriction generally not proper absent an excessive burden on the examiner.)

All Groups should be examined in the same application. It should be noted that this patent application claims the priority of PCT/FR04/01892. Accordingly, the PCT rules regarding unity of invention apply (PCT Article 27, MPEP 1893.03(d)), and the PCT application was not subject to a unity of invention election. It should also be noted that the PCT rules regarding unity are more liberal than the rules which would apply in the case of a patent application initially filed directly in the US. Also, there are common “special technical features” linking these groups (implant, deformable character, a case). (Compare the “special technical features” requirement of PCT Rule 13.2 with the requirements of MPEP 802, 803, and 806.05.)

Also, the fact that the kit of Group I could be manufactured in a way different from the method of Group III, and the fact that the inventions are allegedly “not useable together” or are allegedly “patentably distinct”, are not relevant criteria for assessing unity under the PCT rules which are controlling and must be applied here.

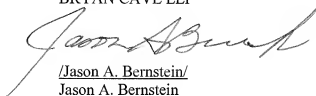
Absent a clear and serious extra burden on the examiner under MPEP Rule 803, and in the interests of equity and fairness, applicants are entitled to pursue different types of claims in a single application to fully protect the invention. The restriction requirement is unfair to the applicants because it will require the applicants to file and bear the additional cost and time delay associated with filing one or more divisional applications in order to fully protect the invention.

Therefore, as Groups I-IV are actually very similar in subject matter, and as a search conducted on disclosures having common special technical features would be relevant to all Groups, it clearly would not be overly burdensome on the examiner to search and examine all Groups at the same time and in the same application. This is also the result required according to the PCT rules.

CONCLUSION

Applicants submit that this response is complete and that all Groups should be examined in a single application, and respectfully request such action. If the Examiner has any questions that can be answered by telephone, please contact the undersigned attorney of record at the telephone number listed below.

Respectfully submitted,
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A handwritten signature in cursive script, appearing to read "Jason A. Bernstein".

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